

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LES G. HEGEL,	)
	) No. CV-06-135-CI
Plaintiff,	)
	) ORDER DENYING PLAINTIFF'S
v.	) MOTION FOR SUMMARY JUDGMENT
	) AND GRANTING DEFENDANT'S
LINDA S. MCMAHON, Commissioner	) MOTION FOR SUMMARY JUDGMENT
of Social Security, <sup>1</sup>	)
	)
	)
Defendant.	)
	)

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Before the court are cross-Motions for Summary Judgment. (Ct. Recs. 17, 20). Attorney Maureen J. Rosette represents the Plaintiff. United States Attorney Pamela J. DeRusha and Special Assistant United States Attorney Thomas M. Elsberry represent the Defendant. The parties have consented to proceed before a magistrate judge. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment and **GRANTS** Defendant's Motion for Summary Judgment

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<sup>1</sup> As of January 20, 2007, Linda S. McMahon succeeded Defendant Commissioner Jo Anne B. Barnhart as Acting Commissioner of Social Security. Pursuant to FED. R. CIV. P. 25(d)(1), Commissioner Linda S. McMahon should be substituted as Defendant, and this lawsuit proceeds without further action by the parties. 42 U.S.C. § 405(g).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

**JURISDICTION**

Les Hegel, Plaintiff, filed for Supplemental Security Income benefits on May 17, 2000. (Tr. 83-86.) He alleged disability due to various physical problems, mental mania, and depression, with an onset date of November 3, 1998. (Tr. 83, 92.) His application was denied both initially and upon reconsideration. (Tr. 63-66, 69-71.) He timely requested a hearing, which was held on April 18, 2001, before Administrative Law Judge (ALJ) Mary Bennett Reed. (Tr. 468.) In an Order dated April 30, 2003, the Appeals Council vacated the ALJ's unfavorable decision and remanded the case for further proceedings. (Exhibit 7B). After hearings on June 16, 2004, and November 16, 2004, the ALJ denied Plaintiff's application and the Appeals Council denied review, making the ALJ's decision the final decision of the Commissioner. (Tr. 10-13.) The instant matter is before the district court pursuant to 42 U.S.C. § 405(g).

**SEQUENTIAL EVALUATION**

The Social Security Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner is governed by a five-step sequential evaluation process for determining whether a plaintiff is disabled. 20 C.F.R. §§ 404.1520, 416.920, *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987):

Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If she is, benefits are denied. If she is not, the decision maker

1 proceeds to step two.

2 Step 2: Does the claimant have a medically severe impairment  
3 or combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii),  
4 416.920(a)(4)(ii)). If the claimant does not have a severe  
5 impairment or combination of impairments, the disability claim is  
6 denied. If the impairment is severe, the evaluation proceeds to the  
7 third step.

8 Step 3: Does the claimant's impairment meet or equal one of  
9 the listed impairments acknowledged by the Commissioner to be so  
10 severe as to preclude substantial gainful activity? 20 C.F.R. §§  
11 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P,  
12 App. 1. If the impairment meets or equals one of the listed  
13 impairments, the claimant is conclusively presumed to be disabled.  
14 If the impairment is not one conclusively presumed to be disabling,  
15 the evaluation proceeds to the fourth step.

16 Step 4: Does the impairment prevent the claimant from  
17 performing work she has performed in the past? 20 C.F.R. §§  
18 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's  
19 residual functional capacity assessment is considered. If the  
20 claimant is able to perform her previous work, she is not disabled.  
21 If the claimant cannot perform her previous work, then the  
22 evaluation proceeds to the fifth and final step.

23 Step 5: Is the claimant able to perform other work in the  
24 national economy in view of her age, education, work experience and  
25 residual functional capacity? 20 C.F.R. §§ 404.1520(a)(4)(v),  
26 416.920(a)(4)(v).

27 The initial burden of proof rests upon the claimant to  
28 establish a prima facie case of entitlement to disability benefits.

1 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971). This burden  
2 is met once a claimant establishes that a physical or mental  
3 impairment prevents her from engaging in her previous occupation.  
4 In steps one through four, a claimant must demonstrate a severe  
5 impairment and an inability to perform past work. *Erickson v.*  
6 *Shalala*, 9 F.3d 813, 816-17 (9<sup>th</sup> Cir. 1993). If a claimant meets  
7 those requirements, the burden shifts to the Commissioner to  
8 demonstrate a claimant can engage in other types of substantial  
9 gainful work which exist in the national economy. *Id.* at 817  
10 (citing *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9<sup>th</sup> Cir. 1984)).  
11 To make this determination, the Commissioner must consider a  
12 claimant's age, education, and work experience. 20 C.F.R. §  
13 404.1520(f). See *Bowen v. Yuckert*, 482 U.S. 137, 107 S.Ct. 2287  
14 (1987).

#### 15 STANDARD OF REVIEW

16 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
17 court set out the standard of review:

18 A district court's order upholding the Commissioner's  
19 denial of benefits is reviewed de novo. *Harman v. Apfel*,  
20 211 F.3d 1172, 1174 (9<sup>th</sup> Cir. 2000). The decision of the  
21 Commissioner may be reversed only if it is not supported  
22 by substantial evidence or if it is based on legal error.  
23 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).  
24 Substantial evidence is defined as being more than a mere  
25 scintilla, but less than a preponderance. *Id.* at 1098. Put  
26 another way, substantial evidence is such relevant  
evidence as a reasonable mind might accept as adequate to  
support a conclusion. *Richardson v. Perales*, 402 U.S.  
389, 401 (1971). If the evidence is susceptible to more  
than one rational interpretation, the court may not  
substitute its judgment for that of the Commissioner.  
*Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
*Social. Sec. Admin.*, 169 F.3d 595, 599 (9<sup>th</sup> Cir. 1999).

27 The ALJ is responsible for determining credibility,  
28 resolving conflicts in medical testimony, and resolving  
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup>  
Cir. 1995). The ALJ's determinations of law are reviewed

1        *de novo*, although deference is owed to a reasonable  
2        construction of the applicable statutes. *McNatt v. Apfel*,  
3        201 F.3d 1084, 1087 (9<sup>th</sup> Cir. 2000).

4                                **STATEMENT OF THE CASE**

5        Detailed facts of the case are set forth in the transcript of  
6        proceedings and the ALJ's decision and are briefly summarized here.  
7        Plaintiff was 49 at the time of the initial hearing, and 53 at the  
8        time of the last two hearings. (Tr. 241.) Plaintiff is single with  
9        no children. (Tr. 471-72.) He completed the eleventh grade and his  
10       GED. (Tr. 472.) He had Certified Nurse's Aid (CNA) training in  
11       1998. (Tr. 502-03.) Over the last fifteen years, Plaintiff worked  
12       as a janitor, dog groomer, nurse's aide, and driver. (Tr. 93.) He  
13       left his most recent job as a driver after injuring his back and  
14       left wrist on the job. (Tr. 93, 475.) Plaintiff testified that he  
15       suffers from anxiety, especially in public. (Tr. 490-92.) Doctors  
16       Arnold and Everhart diagnosed him with a depressive disorder. (Tr.  
17       274, 328.) Doctors Bailey, Arnold, Everhart, and Toews agreed that  
18       Plaintiff has a personality disorder, nos. (Tr. 274, 328, 164,  
19       539.) The doctors differed as to the extent to which Plaintiff's  
20       diagnosis affects his ability to work. (Tr. 165, 275, 331-333, 545-  
21       546.)

22       Regarding his daily activities, Plaintiff testified he takes  
23       care of his dogs, waters the lawn, takes a walk, and sometimes dusts  
24       and cleans. (Tr. 571.) He does not like to grocery shop because he  
25       becomes paranoid in public places. (Tr. 492.) He has no hobbies.  
26       (Tr. 571.)

27       Plaintiff's partner Kevin Robinson, vocational expert Tom  
28       Moreland, vocational expert Deborah LaPoint, medical expert Jay M.  
29       Toews, Ed.D., and medical expert Arthur B. Craig also testified.

1 (Tr. 467, 519, 586.)

2 **ADMINISTRATIVE DECISION**

3 In the final opinion, at step one, ALJ Reed found Plaintiff had  
4 not engaged in substantial gainful activity since the onset of the  
5 disability. (Tr. 42.) At step two, she found that the degenerative  
6 disc disease and coronary artery disease are "severe" based on the  
7 requirements in 20 C.F.R. § 416.920(b) (Tr. 42-43), but found that  
8 the claimant did not have a severe mental impairment. (Tr. 41-42.)  
9 At step three, the ALJ found that the impairments do not meet or  
10 medically equal one of the listed impairments. (Tr. 43.) The ALJ  
11 found that the claimant's allegations regarding his limitations are  
12 not credible. (Tr. 43.) In the case of the mental impairments, the  
13 ALJ found that the evidence of malingering in multiple tests  
14 indicated that the claimant was not credible in his self reporting  
15 of mental symptoms. (Tr. 37-38.) At step four, she found the  
16 claimant could perform a significant range of light work; claimant  
17 could sit, stand, and/or walk 6 hours in an 8 hour day. (Tr. 43.)  
18 She found the claimant not disabled as defined in the Social  
19 Security Act. (Tr. 43.)

20 **ISSUES**

21 The question presented is whether the ALJ's decision is  
22 supported by substantial evidence and is free of legal error.  
23 Plaintiff argues that the ALJ erred when she: (1) improperly  
24 evaluated the medical evidence in determining the severity of  
25 Plaintiff's mental impairment; (2) relied on the testimony of a non-  
26 examining medical expert; and (3) improperly rejected the opinions  
27 of Plaintiff's examining psychologists. (Ct. Rec. 18, at 15-14.)  
28

**DISCUSSION**

In a disability proceeding, a treating or examining physician's opinion is given more weight than that of a reviewing or non-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9<sup>th</sup> Cir. 2004); *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9<sup>th</sup> Cir. 2001) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)); *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996); *Smolen v. Chater*, 80 F.3d 1273, 1285-88 (9<sup>th</sup> Cir. 1996); *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9<sup>th</sup> Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir. 1989). If a treating or examining physician's opinions are not contradicted, they can be rejected only with "clear and convincing" reasons. *Lester*, 81 F.3d at 830. If contradicted, the ALJ may reject the opinion if specific, legitimate reasons that are supported by substantial evidence are given. See *Flaten*, 44 F.3d at 1463; *Fair*, 885 F.2d at 605. To meet this burden, the ALJ can set out a detailed and thorough summary of the facts and conflicting clinical evidence, state his or her interpretation of the evidence, and make findings. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9<sup>th</sup> Cir. 2002), citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989).

Here, the ALJ set forth a detailed summary of Plaintiff's medical treatment since November 1998. Her summary is supported by the record.

In June 2000, James Bailey, Ph.D., clinical psychologist, examined Plaintiff in conjunction with public assistance benefits. (Tr. 27.) The results of Plaintiff's mini-mental status examination were normal. *Id.* The Minnesota Multiphasic Personality Inventory (MMPI) scores were not found valid, based on Dr. Bailey's assessment

1 that Plaintiff exaggerated his symptoms. *Id.* Dr. Bailey diagnosed  
2 mood disorder and personality disorder, nos. *Id.* In the examination  
3 form, he indicated Plaintiff exhibited a few "marked" and "moderate"  
4 social limitations. *Id.* He opined such limitations would last up to  
5 a year. *Id.*

6 In July 2000, the claimant visited his treating physician, Dr.  
7 Susan Ashley, M.D. He complained of depression, a lifelong  
8 affliction related to childhood abuse. *Id.* Dr. Ashley diagnosed  
9 depression and anxiety and prescribed Paxil. (Tr. 27, 188).

10 John Arnold, Ph.D., clinical psychologist, performed a  
11 psychological assessment in May 2001. (Tr. 27.) Plaintiff described  
12 his current physical issues, his abusive father, a suicide attempt  
13 20 years prior, and his daily activities. (Tr. 28.) He also told  
14 Dr. Arnold that he was taking  $\frac{1}{4}$  to  $\frac{1}{2}$  pill of Paxil daily. *Id.* Dr.  
15 Arnold administered the MMPI-II the results of which he deemed  
16 invalid. *Id.* The MCMI-III and P-3 were deemed valid. *Id.* Dr.  
17 Arnold interpreted a tendency towards self debasement in the MCMI-  
18 III as typical of Plaintiff's personality type, thus not indicative  
19 of malingering. *Id.* Dr. Arnold noted mild depression as shown on  
20 the Beck inventory. (Tr. 33.) Dr. Arnold diagnosed Plaintiff with  
21 anxiety disorder; somatoform disorder features; personality  
22 disorder, nos; and global assessment of functioning of 55. (Tr. 28.)  
23 He opined that Plaintiff was moderately limited in: (1) the ability  
24 to remember locations and work-like procedures; (2) carry out  
25 detailed instructions; (3) work in coordination with or proximity to  
26 others without being distracted by them; (4) get along with  
27 coworkers or peers without distracting them or exhibiting behavioral  
28 extremes; (5) travel in unfamiliar places or use public



1 transportation; and (6) set realistic goals or make plans  
2 independently of others. *Id.* Further, he opined Plaintiff was  
3 markedly limited in: (1) the ability to understand and remember  
4 detailed instructions; (2) maintain attention and concentration for  
5 extended periods; (3) perform activities on a schedule, maintain  
6 attention and be punctual within customary tolerances; (4) complete  
7 a normal workday and workweek without an unreasonable number and  
8 length of rest periods; and (5) accept instructions and respond  
9 appropriately to criticism from supervisors. *Id.*

10 In Dr. Arnold's second evaluation in June 2002, he diagnosed  
11 major depression, recurrent, moderate; somatoform disorder features;  
12 and schizoid personality features. *Id.* He opined Plaintiff had  
13 moderate limitations in: (1) the ability to understand, remember and  
14 follow complex instructions; (2) learn new tasks; (3) relate  
15 appropriately to coworkers and supervisors; (4) respond  
16 appropriately to and tolerate the pressures and expectations of a  
17 normal work setting; and (5) control physical or motor movements and  
18 maintain appropriate behavior. (Tr. 29.) Further, he opined  
19 Plaintiff had marked limitations in the ability to exercise  
20 judgement and make decisions and interact appropriately in public  
21 contacts. *Id.* He expected this limitations to last six months. *Id.*  
22 Six months later, Dr. Arnold completed the same form, this time  
23 diagnosing major depression, recurrent, moderate; somatoform  
24 disorder features; and personality disorder, nos, with obsessive and  
25 schizoid features. *Id.*

26 In Dr. Arnold's fourth and fifth evaluations, he noted recent  
27 depressive symptomatology related to Plaintiff's heart condition,  
28 diagnosing personality disorder, nos, with depressive, paranoid and

1 passive aggressive features and somatoform disorder features. *Id.*  
2 Dr. Arnold opined that Plaintiff would have moderate limitations in  
3 cognitive functioning and a marked limitation in the ability to  
4 exercise judgment and make decisions. *Id.*

5 In January 2004, Joyce Everhart, Ph.D., examined Plaintiff due  
6 to allegations of anxiety, depression, intellectual problems,  
7 somatoform disorder and personality disorder. *Id.* She administered  
8 and interpreted several tests including: full scale IQ, General  
9 Memory, WMS-III, MMPI-2, and TOMM. (Tr. 30.) The results of the  
10 tests suggested lack of best effort and malingering. *Id.* She  
11 diagnosed depressive disorder, nos; malingering; personality  
12 disorder, nos; and global assessment of function of 61.<sup>2</sup> *Id.* She

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14 <sup>2</sup> The GAF scale is a common tool for tracking and evaluating  
15 the overall psychological functioning of a patient. A score of 41-  
16 50 indicates "severe symptoms (e.g., suicidal ideation, severe  
17 obsessional rituals, frequent shoplifting) OR any serious impairment  
18 in social, occupational or school functioning (e.g., no friends,  
19 unable to keep a job)." A score of 51-60 indicates "moderate  
20 symptoms (e.g., flat affect and circumstantial speech, occasional  
21 panic attacks) OR moderate difficulty in social, occupational, or  
22 school functioning (e.g., few friends, conflicts with peers or co-  
23 workers)." A score of 61-70 indicates "some mild symptoms, (e.g.,  
24 depressed mood and mild insomnia) OR some difficulty in social,  
25 occupational, or school functioning (e.g., occasional truancy, or  
26 theft within the household), but generally functioning pretty well,  
27 has some meaningful interpersonal relationships." DIAGNOSTIC AND  
28 STATISTICAL MANUAL OF MENTAL DISORDERS, 4<sup>TH</sup> ed. (DSM-IV), at 32 (1995).

1 opined Plaintiff may have problems with pace on complex multi-step  
2 tasks. *Id.*

3 Dr. Ashley evaluated Plaintiff in April 2004. (Tr. 32.) She  
4 noted he reported lifelong depression and anxiety and opined that he  
5 was severely limited for at least 12 months due, in part, to  
6 coronary artery disease and depression/anxiety. *Id.* When the  
7 Department of Social and Health requested Dr. Ashley to redo the  
8 examination based on the cardiac surgeon's assessment that  
9 Plaintiff's heart condition no longer prevented him from working,  
10 she opined that, despite his severe underlying depression and  
11 anxiety, he could work at the sedentary level. *Id.*

12 Dr. Jay B. Toews, a medical expert in psychology, testified  
13 that the record failed to show that the claimant had a severe mental  
14 impairment. (Tr 33.) Dr. Toews noted that testing performed by Dr.  
15 Everhart suggested malingering. *Id.* Attention and concentration  
16 testing were within normal limits; he had a normal working memory  
17 and processing speed; and Trails A and B were within normal limits,  
18 further supporting malingering. (Tr. 34.) Dr. Toews stated that  
19 the record supports a diagnosis of personality disorder, nos, and  
20 episodic depression, but neither reflected evidence of schizoid  
21 features, nor did the record indicate somatoform disorder. *Id.* The  
22 valid MMPI did not support a diagnosis of anxiety. *Id.* According to  
23 Dr. Toews, the record did not support the limitations assessed by  
24 Dr. Arnold, because in addition to the normal test results, there  
25 was no evidence of difficulty of social interaction at work, no  
26 angry outbursts, no antisocial behavior or other behavioral  
27 extremes. *Id.* Any difficulties encountered by the personality  
28 disorder would be mild, so Dr. Toews testified that the mental

1 impairment caused by the personality disorder was not severe. *Id.*

2 Plaintiff argues that the ALJ did not properly reject the  
3 opinions of her examining psychologists when she relied upon Dr.  
4 Toews' testimony. (Ct. Rec. 18 at 19.) The ALJ is responsible for  
5 resolving conflicts and ambiguities in the evidence. *Sample v.*  
6 *Schweiker*, 694 F. 2d 639, 642 (9<sup>th</sup> Cir. 1982). The analysis and  
7 opinion of an expert selected by an ALJ may be helpful in her  
8 adjudication and resolution of conflicting medical testimony.  
9 *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995), citing  
10 *Magallanes*, 881 F.2d at 753. Courts have upheld an ALJ's decision  
11 to reject the opinion of an examining physician based, in part, on  
12 the testimony of a non-examining medical advisor. *See Tonapetyan v.*  
13 *Halter*, 242 F.3d 1144, 1148-49 (9<sup>th</sup> Cir. 2001); *Lester*, 81 F.3d at  
14 831. Testimony of a medical expert may serve as substantial  
15 evidence when supported by other evidence in the record.  
16 *Magallanes*, 881 F.2d at 752. A reviewing court may not second guess  
17 the ALJ if the evidence rationally supports his or her  
18 determination. *Andrews*, 53 F.3d at 1039-40. If supported by  
19 substantial evidence, the ALJ's decision must be upheld, even where  
20 the evidence is susceptible to more than one rational  
21 interpretation. *Id.*

22 In her evaluation of the medical evidence, the ALJ must set  
23 forth specific reasons for the weight given to all acceptable  
24 medical source opinions. *Id.* at 1042. If the ALJ rejects a  
25 contradicted medical opinion, she must give specific, legitimate  
26 reasons for doing so. However, the court does not require a  
27 "special incantation" in the rejection of medical opinions. Rather,  
28 the reviewing court may draw specific and legitimate inferences from

1 the ALJ's summary of the evidence, interpretation and findings, as  
2 long as they are supported by substantial evidence in the record.  
3 *Magallanes*, 881 F.2d at 755. Historically, courts have recognized  
4 internal inconsistencies, conflicting medical evidence, the absence  
5 of regular medical treatment during the alleged period of  
6 disability, and the lack of medical support for doctors' reports  
7 based substantially on a claimant's subjective complaints as  
8 specific, legitimate reasons for disregarding an examining  
9 physician's opinion. *Thomas*, 278 F. 3d at 957; *see also Flaten*, 44  
10 F.3d at 1463-64; *Fair*, 885 F.2d at 605. Further, the more  
11 consistent an opinion is with the record as a whole, the more weight  
12 is given to that opinion. 20 C.F.R. § 404.1527(d)(4). The ALJ does  
13 not need to accept the opinion of any medical source if it is  
14 conclusory, brief or unsupported by findings. *Matney on Behalf of*  
15 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9<sup>th</sup> Cir. 1992).

16 As summarized and interpreted by the ALJ, the medical evidence  
17 reveals specific and legitimate inferences that support the ALJ's  
18 rejection of the assessments that Plaintiff had severe mental  
19 impairment. (Tr. 35, 37-41.) The ALJ made specific findings  
20 rejecting the diagnoses and assessed limitations of Drs. Bailey,  
21 Arnold, Ashley, and Everhart. (Tr. 37-41.) Specifically, the ALJ  
22 noted the inconsistencies in the record regarding the claimant's  
23 self-reported symptoms, the lack of narrative support for diagnoses,  
24 and limitations assessments that were at odds with results of  
25 psychological testing performed by the examining doctors. *Id.*

26 ALJ Reed properly rejected diagnoses based solely on the  
27 claimant's self-reported symptoms. She found that the claimant was  
28 not fully credible. (Tr. 37.) Several tests suggested malingering.

1 (Tr. 37.) Further, the ALJ reviewed the claimant's testimony and  
2 found many inconsistencies. (Tr. 36-37.) The ALJ found that lack of  
3 credibility and malingering undermined assessments and diagnoses  
4 based solely on self-reported symptoms. (Tr. 38-39.)

5 The ALJ properly found that Dr. Bailey and Dr. Arnold's  
6 evaluations were not validated by test results or their narratives  
7 supporting their diagnoses and assessments. Dr. Bailey assessed  
8 cognitive limitations despite a normal mini-mental status test.  
9 (Tr. 38.) He opined that Plaintiff had significant social  
10 limitations, citing a MMPI which he acknowledges was invalid. *Id.*  
11 Dr. Arnold's diagnosis differed from Dr. Bailey's. The MMPI  
12 administered by Dr. Arnold showed exaggeration of symptoms. *Id.* He  
13 performed cognitive testing showing borderline intellectual  
14 functioning; however, the ALJ discounted this test because similar  
15 tests performed by Dr. Everhart suggested that the claimant feigned  
16 memory/cognitive difficulties. *Id.* Dr. Arnold diagnosed an anxiety  
17 disorder, but failed to provide any narrative basis for the  
18 diagnosis. *Id.* The limitations assessed by Dr. Arnold were based  
19 solely on the claimant's subjective complaints. (Tr. 38-39.) Since  
20 the ALJ determined that the claimant was not credible, the ALJ  
21 rejected Dr. Arnold's limitation assessments. *Id.*

22 The ALJ properly found that Dr. Everhart's assessments of  
23 "moderate" and "marked" limitations were not supported by her  
24 findings. The ALJ credited Dr. Everhart's findings and assessment  
25 of test results including Dr. Everhart's diagnosis of malingering.  
26 (Tr. 40.) Results showed malingering in the tests for concentration  
27 and attention. *Id.* Dr. Everhart assessed marked/moderate limitations  
28 in attention and concentration and social awareness. *Id.* However,

1 the ALJ determined that Dr. Everhart's determination of malingering  
2 and her narrative describing the claimant's long term relationship,  
3 positive social skills, and good grooming did not support her  
4 assessment of "marked" or "moderate" limitation of social  
5 expectations. *Id.*

6 Lastly, the ALJ properly rejected Dr. Ashley's diagnosis of  
7 severe depression and anxiety. First, Dr. Ashley's diagnosis relied  
8 entirely on the self-report of the claimant who was determined not  
9 to be credible. (Tr. 37, 27.) Secondly, Dr. Ashley's assessments  
10 of Plaintiff's work ability suggests that the depression did not  
11 prevent him from working. (Tr. 32.)

12 In sum, ALJ Reed properly found that Dr. Bailey, Dr. Arnold,  
13 and Dr. Everhart's conclusions were not supported by their  
14 findings. The ALJ adopted the "persuasive testimony of Dr. Toews,"  
15 after she thoroughly discussed and analyzed Dr. Arnold, Dr. Bailey,  
16 and Dr. Everhart's assessed limitations and rejected their opinions  
17 with specific and legitimate reasons, *i.e.*, lack of credibility of  
18 the claimant, lack of narrative explanation of the diagnoses, and  
19 test results that contradicted the assessments. (Tr. 40-41.) In the  
20 case of Dr. Arnold, lack of narrative explanation in several  
21 instances suggests conclusory diagnoses. (Tr. 39.) It should be  
22 noted that though Dr. Arnold, Dr. Bailey and Dr. Everhart each  
23 assessed "marked" and "moderate" limitations, they rarely agreed  
24 among themselves which of the limitations applied to Plaintiff.  
25 (Tr. 27-30.) Lack of consistent opinions requires the ALJ to  
26 determine the severity of limitations.

27 The record in its entirety supports the ALJ's reliance on Dr.  
28 Toews' opinions and her ultimate decision that the Plaintiff had no

1 severe mental impairment. The ALJ did not err in her evaluation of  
2 the medical evidence.

3 **CONCLUSION**

4 The ALJ properly rejected the examining psychologists' opinions  
5 that Plaintiff had severe mental limitations. The ALJ's reliance on  
6 Dr. Toews' testimony, which is supported by other evidence in the  
7 record, was not legal error. The ALJ's ultimate findings, are  
8 supported by substantial evidence in the entire record.  
9 Accordingly,

10 **IT IS ORDERED:**

11 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 17**) is  
12 **DENIED.**

13 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 20**) is  
14 **GRANTED.**

15 3. Judgment for the **DEFENDANT** shall be entered. The District  
16 Court Executive is directed to enter this Order, forward copies to  
17 counsel, and thereafter shall close this file.

18 DATED February 1, 2007.

19  
20 S/ CYNTHIA IMBROGNO  
21 UNITED STATES MAGISTRATE JUDGE  
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